

# **EXHIBIT E**

COMMONWEALTH OF MASSACHUSETTS

UNITED STATES DISTRICT COURT

Volume I  
Pages 1-218

Rule 30 Deposition

RI SEEKONK HOLDINGS, LLC

vs.

TIMOTHY P. MCINERNEY, ET AL

DEPOSITION OF TIMOTHY P. MCINERNEY, taken in  
behalf of the plaintiff, pursuant to the applicable  
provisions of the Massachusetts Rules of Civil  
Procedure, before Melissa Prodanis, Court Reporter  
and Notary Public in and for the Commonwealth of  
Massachusetts, at the Offices of GOUDREAU & GROSSI  
COURT REPORTING SERVICE, INC., 63 Winthrop Street,  
Taunton, Massachusetts, on Wednesday, February 8,  
2006, commencing at 9:42 a.m.

\* \* \* \* \*

1 someone indicate that it would be good or  
2 appropriate for the Town to get teeth in dealing  
3 with Mr. Tapalian in the future?

4 A I don't recall that.

5 Q The executive session -- well -- first of all,  
6 you took from the time that you became  
7 Administrator until the time of this meeting  
8 where Mr. Tapalian is discussed and the  
9 reporters are claiming that they heard things in  
10 the hallway, in that period of time, did you  
11 learn who Mr. Tapalian was?

12 MR. SILVERFINE: Objection as to form of  
13 the question. You can answer.

14 A I don't know when I learned of Mr. Tapalian. I  
15 can't say if it was from the 5th to the 25th. I  
16 have no idea if it was after or before that.

17 Q What do you recall first learning about  
18 Mr. Tapalian?

19 A I think we had every time, just in terms of  
20 policy, I guess I'll just go through this  
21 quickly, when a board member changes on the  
22 Board of Selectmen or they hire a new  
23 Administrator, they ask for a litigation status  
24 report from town counsel. Perusing that

1 document, again, I can't give details. I know  
2 the name was in there.

3 Q All right. Who was town counsel at the time?

4 A Um --

5 Q Was it Mr. Lehane?

6 A Michael Lehane, correct.

7 Q Mr. Lehane would be the one who furnished that  
8 report?

9 A I don't know if it would be him or a secretary  
10 or someone else's office but it would be him.

11 Q Mr. Lehane's office?

12 A Yes.

13 Q Do you have any understanding as to why the  
14 attorneys who were actually handling the case  
15 did not give a report?

16 A Handling which case?

17 Q Case involving Mr. Tapalian.

18 A No. I don't know why.

19 Q Okay. But your information came from  
20 Mr. Lehane, his office?

21 A Best recollection, yes.

22 Q All right. And what was it that you recall  
23 learning about, first learning about,  
24 Mr. Tapalian from that or any other source?

1 A I don't recall particulars just that he had been  
2 involved in litigation with the Town for  
3 sometime, different lawsuits. Debra Ellison was  
4 a lawyer for Kopelman Paige and I don't know if  
5 I saw that or someone told me that she worked on  
6 a lot of documentation, not documentation per  
7 se, but letters that went out with regard to  
8 that she was working on the case. So, that's  
9 all I really knew.

10 Q Did you know Ms. Ellison from prior experience  
11 in the Town of Salisbury?

12 A Yes.

13 Q Okay. Did you call her about Mr. Tapalian?

14 A No.

15 Q Okay. What was about the fact that she had  
16 worked on something that drew your attention?

17 A No. I think one of my employees mentioned her  
18 as drafting correspondence to Mr. Tapalian  
19 relative to one of the previous lawsuits.

20 Q Which employee are you referring to?

21 A Jim Tusino.

22 Q Okay. Leading up to this meeting where the  
23 journalists claim to have heard things from the  
24 hall leading up to that meeting, did you have

1 any discussions with anyone about Mr. Tapalian?

2 A I don't recall. I don't know.

3 Q Okay. At this meeting that we're talking about,  
4 do you remember the meeting?

5 A Yeah.

6 Q Okay. And what do you recall being discussed  
7 about Mr. Tapalian at that meeting?

8 A I don't recall anything about Mr. Tapalian. The  
9 only pertinent information I had was Jimmy  
10 didn't want to be held responsible for the  
11 damages and he wanted to have his job as a  
12 special police officer reinstated. That was  
13 what Jimmy always pushed me on, always pushed  
14 the Board on; and that's what I took away from  
15 that meeting.

16 Q How would you describe your relationship with  
17 Mr. Tusino?

18 A Today?

19 Q At that time.

20 A He was an employee.

21 Q Okay. You referred to him as "Jimmy". Were you  
22 on a first name basis with him?

23 A Jim. I think Jim was the -- if we were in  
24 public session, it was always DPW Director or

1 Mr. Tusino but in person it was Jim, yeah. I  
2 don't think Jimmy was the word but Jim.

3 Q And what did Mr. Tusino tell you about  
4 Mr. Tapalian?

5 A Well, actually, he didn't tell me about him. He  
6 told me what he says he was accused of and what  
7 he said he didn't do and lamented about it quite  
8 often only as it relates to his job as a special  
9 police officer because he always wanted to be  
10 reinstated as a special cop. That's what he  
11 always thought it was inappropriate for him to  
12 be removed based on this allegation and  
13 subsequent appeal and allegation and loss and  
14 that sort of thing.

15 Q What, if anything, did you do to investigate  
16 personally the matters in litigation that were  
17 reported to you by Mr. Lehane's office?

18 MR. SILVERFINE: When are we talking?

19 MR. REILLY: I'm sorry?

20 MR. SILVERFINE: When?

21 Q Mr. Lehane's office, this initial report that  
22 you got, that's what I'm talking about.

23 A I didn't do anything. There was nothing for me  
24 to do.

1 Q All right. Did you try to assess in anyway the  
2 merits of any of these cases?

3 A No.

4 Q All right. In other words, was there more than  
5 just one case on this list as you recall it?

6 A There were past ones and agreements with the  
7 Town regarding a roadway. I don't know.

8 Q Let me rephrase that. Were there reports given  
9 to you concerning other persons other than  
10 Mr. Tapalian who were involved in litigation  
11 with the council or was he the only person on  
12 this list?

13 A No. I think the Town's been involved with other  
14 litigants.

15 Q All right. And with reference to that first  
16 list that you got, did you make any effort to  
17 make an independent determination as to the  
18 merits of any of these pending cases that were  
19 called to your attention?

20 A No.

21 Q Why not?

22 A No reason. I can't answer it. Why would I?

23 Q Let me ask you this: Was it of any concern to  
24 you whether the Town's position was justified in



1 any of these cases that were in litigation?

2 A If they're in litigation, there's not a lot that  
3 we can do. We're going to take advice of  
4 counsel and the insurance company at the time to  
5 take whatever action they recommended to us.  
6 There wasn't, you know, Mr. McInerney,  
7 Mr. Administrator, what direction should we go?  
8 It was far beyond me and my capability to advise  
9 the Boards or the communities one way or the  
10 other.

11 Q Did the Town incur litigation expenses as a  
12 result of cases involving cases that it was  
13 involved in?

14 A Yeah, unless it was covered by the insurance  
15 company. Insurance company would pay for those  
16 pieces.

17 Q And if it was covered by insurance, there was  
18 still a deductible for the Town, was there not?

19 A Correct.

20 Q So, all of the litigation had either ongoing  
21 expenses or potential expenses for the Town of  
22 Seekonk, correct?

23 A Yeah.

24 Q Okay. During your time as Town Administrator,

1 did you ever attempt to determine whether any  
2 case that involved the Town in litigation or any  
3 officials of the Town to determine the merits of  
4 any of these cases, did you ever do that?

5 A No.

6 Q Did you ever as Town Administrator attempt to  
7 determine whether it was more financially  
8 expedient for the Town to settle a claim as  
9 opposed to litigating a claim?

10 MR. SILVERFINE: Objection as to form.

11 A Again, the insurance company's got to make that  
12 determination. I think they have the first, I  
13 think in some of the clauses, they have first  
14 right of refusal or first notice to let the Town  
15 make the determination if they want to settle  
16 the case.

17 Q There were cases, I think that you said, that  
18 don't involve insurance. I'm including those in  
19 my question.

20 A I don't know. I don't know.

21 Q You can't recall any?

22 A No, not that we weren't covered with insurance  
23 for, to settle wouldn't be, at least when I was  
24 there, there wasn't an opportunity. There

1           wasn't an option to do so. But, again, we would  
2           rely on legal counsel to advise us, cut your  
3           losses, pay it. If we're wrong, pay it; if you  
4           were right, the cost is going to be so much more  
5           to defend. We rely on counsel for that input.

6       Q   All right. Now, with reference to the executive  
7           session in question, you did not hear any -- you  
8           don't recall anything being said about the Town  
9           -- about it being appropriate for the Town to  
10          try to consider future options of any type with  
11          Mr. Tapalian?

12                 MR. SILVERFINE: Objection as to the form.

13       A   No. I don't recall. I don't recall.

14       Q   Do you recall the reporters indicating that they  
15           could plainly hear the discussion from the  
16           hallway?

17       A   Yes. I remember that they had reported on, you  
18           know, what they thought they heard.

19       Q   And wasn't the location of the executive session  
20           meetings changed after that news report came  
21           out?

22       A   Yes. Yes.

23       Q   Out of concern for the fact that someone might  
24           be able to hear something in the hall?

1 A Yeah.

2 Q That's correct?

3 A That's correct.

4 Q Okay. And do you recall the reporters  
5 indicating that they had heard the remarks about  
6 the Town should get teeth for dealing with  
7 Mr. Tapalian as he proceeds with development?

8 MR. SILVERFINE: Can you say that again?

9 (Whereupon the stenographer read back the  
10 last question.)

11 A I don't remember the reporters saying that at  
12 all.

13 Q Do you have any -- assuming -- let me rephrase  
14 that.

15 Assuming that the reporters did report that  
16 night, I'm not going to mark every possible  
17 document at this deposition, but assuming that  
18 for a moment, do you have any understanding why  
19 the executive session minutes that we have  
20 received for that session do not reflect that  
21 language?

22 MR. SILVERFINE: Objection as to the form.

23 A No. I have no idea.

24 Q Who was in charge of preparing executive session

1 minutes at the time?

2 A Cindy Dacanay.

3 Q And Ms. Dacanay had what position?

4 A She was the, I don't know the exact title,  
5 Administrative Secretary to the Board, I want to  
6 say.

7 Q And did you during your time as Town  
8 Administrator approach Ms. Dacanay concerning  
9 executive session tapes?

10 A No.

11 Q Did you ever ask her to take the tapes of the  
12 executive sessions into your own custody?

13 A Um, tapes, no.

14 Q Did Ms. Dacanay record the executive sessions  
15 using a tape recorder?

16 A The reason why I pause is because there was,  
17 when I got there, there was some controversy  
18 about whether it was going to be taped or  
19 whether it was going to be handwritten votes as  
20 the Board went through just as a general  
21 operating procedure. I think when we started,  
22 they weren't taped and then for ease for her to  
23 be able to transcribe, they were allowed to be  
24 taped. So, I'm not sure if she taped that

1 meeting or not.

2 Q I'm not confining myself to that meeting.

3 A No, but she did tape other meetings.

4 Q During the time that you were Town  
5 Administrator, Ms. Dacanay did tape some  
6 executive sessions?

7 A Yes.

8 Q Okay, number one. Number two, during the time  
9 that you were Town Administrator, she may have  
10 missed an executive session here or there  
11 because of vacation or other personal reasons?

12 A Possible.

13 Q Okay. And when she was not present, there was  
14 no other person taking notes of the meeting,  
15 correct?

16 A The way the Board structure is, you'll have the  
17 Chair. You'll have the Vice Chair and you'll  
18 have the secretary and the secretary, you know,  
19 whoever's not a member, it turns out to be the  
20 secretary. I don't know who the secretary would  
21 have been but they would be responsible under  
22 the, you know, the protocol of the Board or the  
23 policy of the Board to take, record the meeting  
24 minutes.

1 Q Well, just suggesting to you that Ms. Dacanay  
2 was the secretary during this period of time --

3 A She was to the Board but within the Board  
4 itself.

5 Q All right. If she was ill or not there, her  
6 tape recorder, the session would be tape  
7 recorded for her to?

8 A I don't think so.

9 Q You don't?

10 A I don't think so.

11 Q Do you think that someone else came in to take  
12 minutes?

13 A I think that the secretary who was a member of  
14 the Board would have kept notes and recorded the  
15 votes.

16 Q Okay. And who do you recall having -- do you  
17 recall any of the selectmen during the time that  
18 you were there -- having meetings recorded and  
19 then transcribed notes of executive sessions?

20 A I don't know who was. No. I know that  
21 Ms. Taylor took copious notes just in every  
22 executive session but that's, I don't know, if  
23 they were ever transcribed.

24 Q In any event, Ms. Dacanay did use tape

1 A I do.

2 Q Okay. That's kind of similar to your statement  
3 about to avoid lawsuits they would be compelled  
4 to allow Mr. Tapalian to do whatever he wanted,  
5 isn't it?

6 A I don't think so.

7 Q Well, in any event, let's go to the last  
8 paragraph on the page. You said you would make  
9 the appropriate inquiries into that course of  
10 action. Did I read that correct?

11 A That's correct.

12 Q Okay. And that course of action was to look  
13 into whether or not there was a way to suspend  
14 the review of further plans for Mr. Tapalian,  
15 wasn't it?

16 A Whether or not it was an appropriate course of  
17 action is what I would have determined or I  
18 would have asked counsel to determine for us.  
19 Is there a way to hold these plans in advance  
20 until we do this?

21 Q You wanted to stop Mr. Tapalian at this point in  
22 time, didn't you?

23 A No.

24 Q You wanted to find out whether there was any



1 Q And that message was received before this letter  
2 from Mr. Tapalian that we see in Exhibit 12?

3 A Yes.

4 Q All right. So, isn't it true that you got  
5 messages from Mr. Tapalian and you didn't answer  
6 them because of -- first of all -- why didn't  
7 you respond to any of the three telephone  
8 messages?

9 MR. SILVERFINE: Objection as to form.

10 A The one I didn't respond to, the voice mail, I  
11 responded to in writing. That was my response  
12 to his voice mail. And then obviously  
13 previously discussed what town counsel and the  
14 Board of Selectmen relative to returning his  
15 calls, you know, what do we do with people we're  
16 in litigation with. And it was fairly clear to  
17 me that you can do two things, have him into a  
18 public session and have him make his  
19 presentation as to what he's looking to do and  
20 quite honestly I was not comfortable knowing the  
21 history of lawsuits for the Town having in my  
22 office closed doors outside conversation with  
23 Mr. Tapalian just for the simple fact with the  
24 past litigation that's gone on with the

1 A I don't know.

2 Q Were there any other people in town who had  
3 litigation pending that you did speak with  
4 during your entire time as Town Administrator?

5 A Not that I recall.

6 Q Are you aware of the -- were you aware when you  
7 were Town Administrator -- of the right of  
8 people to petition their government?

9 A Yeah.

10 Q To talk to government officials?

11 A Yeah.

12 Q Did you have a written opinion from legal  
13 counsel concerning the appropriateness of not  
14 speaking to someone because of the fact that  
15 they had past or present litigation involving  
16 the Town?

17 A I don't know about impending. All I have those  
18 meeting minutes with Mike Lehane that said  
19 response was appropriate at least with the  
20 Beverly Sweet case. So, I don't know if we  
21 asked for an opinion or not. I would guess not  
22 but I don't know.

23 Q Is that because you didn't believe that Charlie  
24 Tapalian was correct in the lawsuit in Boston?

1 did you exercise during your time?

2 A In terms of making policy, I was more of, in my  
3 role, just as an executive to carry out those  
4 administrative policies. I would promulgate  
5 rules and regulations or administrative  
6 policies, give them to the Board for  
7 administration and ratification. And once they  
8 were executed, we would, you know, go down the  
9 path of taking those things on. If it was  
10 inclement weather policy, you had to close town  
11 hall and what the parameters are, those are the  
12 things we brought to the Board, got their  
13 support on, got them executed. Those are the  
14 policies that I would execute on a day-to-day  
15 basis.

16 Q Weren't there daily issues from time to time  
17 that you would just deal with that didn't  
18 perhaps require a policy?

19 A Oh, I'm sure, yeah.

20 Q With reference to the policy that you issued  
21 wherein Department Heads were not to speak with  
22 anyone involved in litigation with the Town of  
23 Seekonk, was that -- that was a policy that you  
24 enacted prior to a Board meeting; is that

1 correct?

2 A I'm not sure if it was before or if it was in  
3 consultation. I think it was in consultation  
4 with Mike Lehane's office first and subsequently  
5 at a subsequent meeting with the Board, I think  
6 he was actually there to confirm that that was  
7 probably the right way to go.

8 Q And in referring to Mr. Lehane's office, was it  
9 Mr. Lehane that you dealt with or was it someone  
10 else in their firm?

11 A Mostly Mike. There was someone else too. I  
12 don't recall her name. It was a female. I  
13 can't recall her name.

14 Q And they provided you advice concerning this  
15 policy?

16 A I think so, to the best of my knowledge but I  
17 can't be 100 percent sure.

18 Q All right. Was this policy that you issued, was  
19 this directive that you had issued that we  
20 talked about last time, did the Department Heads  
21 follow that directive?

22 A I don't know. I imagine they did but I do not  
23 know.

24 Q Did any of the Department Heads object about the